

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Benjamin Harden, #246453,)	
)	C/A No. 3:05-1769-MBS-JRM
Petitioner,)	
)	
vs.)	
)	ORDER
State of South Carolina; and Henry)	
McMaster, Attorney General of South)	
Carolina,)	
)	
Respondents.)	
)	

Petitioner Benjamin Harden is an inmate in custody of the South Carolina Department of Corrections. On June 24, 2005, Petitioner, appearing pro se, filed the within petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, alleging that he received ineffective assistance of trial counsel in violation of his rights under the Sixth Amendment.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Joseph R. McCrorey for pretrial handling. On August 17, 2005, Respondents filed a motion for summary judgment asserting, among other things, that Petitioner's § 2254 petition was untimely. By order filed August 18, 2005, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), Petitioner was advised of the summary judgment procedure and the possible consequences if he failed to respond adequately. Petitioner filed no response to the motion for summary judgment. On October 17, 2005, Petitioner was given another fifteen days to file a response to Respondents' motion for summary judgment. Petitioner was advised that if he failed to respond, the within action would be dismissed for failure to prosecute. Petitioner elected not to respond.

On December 1, 2005, the Magistrate Judge filed a Report and Recommendation in which he recommended that the petition be dismissed pursuant to Rule 41(b), FRCP for failure to prosecute. Petitioner filed no objections to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a *de novo* determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of objections to the Report, this court is not required to give any explanation for adopting the recommendation. Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

The court has reviewed the Report, pleadings, memorandum, and applicable law. The court adopts the Report and Recommendation and incorporates it herein by reference. The case is dismissed *with prejudice* pursuant to Rule 41(b) for failure to prosecute.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina

January 4, 2006.

NOTICE OF RIGHT TO APPEAL

Petitioner is hereby notified that he has the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.